

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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COMPLETE TITLE OF CASE:

STATE OF MISSOURI

Respondent

v.

HARRY J. WILLIAM

Appellant

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**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

DOCKET NUMBER WD78202

DATE: November 8, 2016

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Appeal From:

Circuit Court of Clay County, MO  
The Honorable Shane Terril Alexander, Judge

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Appellate Judges:

Division One  
Thomas H. Newton, P.J., Cynthia L. Martin, and Edward R. Ardini, Jr., JJ.

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Attorneys:

Natalie Hull, Kansas City, MO

Counsel for Appellant

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Attorneys:

Dora Fichter, Jefferson City, MO

Counsel for Respondent

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

STATE OF MISSOURI, Respondent, v.  
HARRY J. WILLIAM, Appellant

**WD78202**

**Clay County**

Before Division One Judges: Newton, P.J., Martin, and Ardini, JJ.

William is a native Pingelapese speaker, a Micronesian island oral language known by only about 2,000 individuals worldwide. He was arrested and charged with first-degree statutory rape in March 2012 for an incident occurring in Clay County involving a child younger than age 14 in 2010. On William's motion for the appointment of a Pingelapese interpreter, a Micronesian speaker and then a Pohnpeian speaker interpreted for him during eight of more than thirty pre-trial hearings. Many of these hearings involved discussions about the inability to locate a Pingelapese translator certified to interpret during court proceedings. The State filed a motion in August 2013 for a qualified court interpreter or the waiver of a qualified interpreter, and William refused to waive the appointment of a qualified interpreter. The court removed the case from the trial docket, so efforts to locate a Pingelapese interpreter could continue. During a hearing in March 2014 to determine whether William spoke sufficient English that an interpreter would not be required, the police detective who interviewed him, William's brother, who was the victim's stepfather, and his sister-in-law, the victim's mother, all testified as to his ability to speak English. He had been in this country for half of his life, worked as a certified nursing assistant in a nursing home, and conversed with co-workers and non-Pingelapese speakers, including the victim, in English. He had also written "yes" on a police document that asked if he could read and write English. The court opined that William's command of English was likely sufficient for trial, but gave the parties more time to locate a Pingelapese interpreter. Despite the inability to locate a suitable interpreter, the parties finally agreed to place the case back on the trial schedule. Only once during the pre-trial hearings had William indicated his inability to understand what was being said. At other times, when asked, he specifically indicated that he could understand the court and his counsel.

On the first day of trial, William moved to dismiss the charge "based upon the interpreter problem." The trial judge, who had presided over every hearing since the charges had been filed and had had the opportunity to observe William, ruled that his understanding of English was "sufficient for Constitutional purposes for him to be able to understand the proceedings against him and participate in his own defense such that no interpreter is necessary in order to protect his constitutional rights." William did not testify in his own defense, and the jury found him guilty as charged. He was sentenced to eighteen years of imprisonment on the jury's recommendation. William appeals the conviction and sentence.

**AFFIRMED.**

**Division One holds:**

In the single point raised, William claims that the circuit court abused its discretion and violated his constitutional rights of due process, equal protection, meaningful participation in trial, and counsel in overruling his motion to dismiss. Section 476.803 of the Missouri Revised

Statutes, adopted in 2004, requires the appointment of qualified interpreters and translators “in all legal proceedings in which the non-English speaking person is a party or a witness.” Section 476.800 defines a non-English speaking person as “any person involved in a legal proceeding who cannot readily speak or understand the English language.” Because Missouri courts have long been given discretion under section 476.060 to decide whether an interpreter is needed during a legal proceeding, we apply a discretionary standard of review to a circuit court’s determination that a party or witness is a non-English speaking person and thus whether a qualified interpreter “shall” be appointed. We reject William’s request that we adopt a number of factors in determining whether a non-English speaking defendant can “readily speak or understand the English language,” because they are far too stringent in requiring the same level of facility in all relevant languages as a certified court interpreter. We are persuaded by decisions in other states, where the courts apply the test for mental capacity in determining whether a non-English speaking person was unable to participate in his or her own defense. That test involves the ability of a defendant to consult with counsel and to understand the proceedings against him or her.

We further reject William’s suggestion that courts consider the complexity of the proceedings, issues, and testimony in deciding whether a defendant can readily speak and understand the English language and, specifically, his suggestion that in a “he said/she said” type of case, the need to understand court-related English is required for a defendant to be able to effectively participate in his own defense. We are unaware of any case law requiring that, for due process purposes, a criminal defendant must understand “court-related English.” We find no abuse of discretion in the circuit court’s determination that William would not be denied his constitutional rights without the assistance of an interpreter at trial. He had been in this country for some eighteen years when he was tried, three witnesses testified that he spoke English on the job and communicated in English with them, and counsel indicated that with just one exception—when explaining the plea offers to William—William was able to communicate with counsel in English. No court has yet ruled that proceeding to trial without an interpreter constitutes a structural error on a par with the absence of counsel or a biased court, and we do not do so given our finding that the circuit court committed no error. William complains that he was prejudiced by the language barrier and did not testify in his own defense because he was not confident of his ability to fully and accurately express himself in English in response to questions. We do not find that a choice not to testify in one’s own defense for language reasons, much like a speech defect, a stutter, or a fear of public speaking, rises to the level of a due process violation. This point is denied.

Therefore, we affirm the conviction.

Opinion by Thomas H. Newton, Judge

November 8, 2016

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